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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ABID GHUMAN, MICHAEL CZARNECKI,  
BRIAN GENORD, CHRISTOPHER JENT, DANIEL QUINN,  
JOHN ROBERTSON, and DAVID SWEET

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Appeal 2008-3539  
Application 10/709,045  
Technology Center 3700

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Decided: October 31, 2008

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Before MURRIEL E. CRAWFORD, LINDA E. HORNER, and  
MICHAEL W. O'NEILL, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Ghuman, et al. (Appellants) appeal under 35 U.S.C. § 134 to the Board of Patent Appeals and Interferences from the Examiner's decision in the Final Office Action dated July 26, 2006. We remanded the appeal, Appeal 2008-1175, to the Examiner in order for the Examiner to enter a paper canceling claims 5-20 (Remand Order, decided May 1, 2008). Claims 1-4 are pending. Claims 5-20 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

#### SUMMARY OF DECISION

We AFFIRM.<sup>1</sup>

#### THE INVENTION

The claimed invention relates to a method of developing a manufacturing process line for the manufacturing of vehicle closures, i.e., vehicle bodies. (Specification ¶ 0007.)

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method of designing a manufacturing process line for a vehicle closure, the method comprising:

identifying a manufacturing process comprising a set of discrete steps to be performed on at least one workpiece;

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<sup>1</sup> Our decision will make reference to Appellants' Appeal Brief ("App. Br.," filed Dec. 21, 2006), Reply Brief ("Reply Br.," filed June 06, 2007), and the Examiner's Answer ("Answer," mailed Apr. 11, 2007).

identifying a plurality of standardized work cells, each work cell having at least one standardized workpiece presenter that supports a workpiece in a predefined spacial<sup>2</sup> orientation, and at least one standardized processing tool, wherein for each work cell at least a portion of the at least one standardized workpiece presenter remains stationary relative to the at least one standardized processing tool when the workpiece is moved within and between each work cell;

selecting a subset of the set of discrete steps to be performed at a work cell and selecting the standardized work cell for performing the subset of steps; and

repeating the selecting step for additional subsets of steps to be performed at one of the plurality of work cells until all of the discrete steps are assigned to one of the plurality of work cells.

## THE PRIOR ART

The Examiner relies upon the following as evidence of unpatentability:

Sekine US 5,127,569 Jul. 07, 1992

## THE REJECTION

The following rejection is before us for review:

Claims 1-4 are rejected under 35 U.S.C. § 102(b) as being anticipated by Sekine.

<sup>2</sup> Variation of the word “spatial.” *Merriam-Webster’s Collegiate Dictionary* 1125 (10th ed. 1993).

## THE ISSUE

The issue is whether the Appellants have shown that the Examiner erred in rejecting claims 1-4 under 35 U.S.C. § 102(b) as being anticipated by Sekine. This issue turns on whether the Appellants have proven that the subject matter shown in Sekine does not inherently possess the step of identifying a set of discrete steps to be performed on a workpiece and the step of identifying a plurality of standardized work cells, each work cell having at least a standardized workpiece presenter that supports a workpiece in a predetermined spatial orientation.

## FINDINGS OF FACT

We find that the following enumerated findings of fact are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Sekine expressly discloses a plurality of standardized assembly sublines (sublines) within a flexible manufacturing system for assembling various vehicle bodies. For example, sublines 1-6 in Sekine are used to assemble the left hood ridge structure (subline 1), the dash lower structure (subline 2), the radiator core support (subline 3), the right hood ridge structure (subline 4), the front floor structure (subline 5), and the rear floor structure (subline 6). (Sekine, col. 3, 1. 67 to col. 4, 1. 5.)
2. A subline generally consists of a number of stages such as: type switching stage, a workpiece pickup stage, an assembling stage, and a

transferring stage. (Sekine, col. 4, ll. 25-52.) Each subline has at least one work presenter, e.g., carrier 25 (along with the associated workpiece positioning device 26, base board 27, three dimensional moving mechanism 29, workpiece holder 30), that supports the workpiece, e.g., left hood structure, radiator core support, front floor structure, etc., in a predefined spatial orientation. (Sekine, col. 5, ll. 20-40.) For instance, as shown in Figure 4, work presenter 25 is holding work piece 42, shown in phantom, overhead. As shown in Figure 6, work presenter/carrier 25 is holding right side body structure 74 vertically for presentment to subline 16 (body main structure assembly stage) that spot welds the body structure 74 with a spot-welding robot (a standardized processing tool in manufacturing of car bodies) to the main floor structure 68, left side body structure 73, roof panel structure 69, parcel shelf structure 70, air box structure 71, and rear panel structure 72 in order to assemble a body main structure, i.e., a vehicle closure. (Sekine, col. 10, ll. 47-57.) Other work presenters would be the looped guideways (another standardized processing tool) A-L that carriers 25 would move along. (Sekine, col. 4, ll. 53-56.)

3. Sekine expressly discloses a set of steps the work presenter 25 undertakes on a workpiece e.g., the left hood structure, the radiator core support, the front floor structure, etc. This set of discrete steps is disclosed as:

(a) moving the carrier together with the work piece positioning device to a type switching stage, the type switching stage being capable of actuating the work piece positioning device by using a power source mounted on the type switching stage, (b) connecting the power source on the type switching stage to the work piece positioning device to

change the positions of the work piece holders in accordance with a type of work piece which will be subsequently handled by the positioning device, (c) disconnecting the power source from the positioning device upon completion of the position change of the work piece holders, (d) moving the carrier together with the work piece positioning device to a work piece pick up stage, (e) picking up at least one selected work piece from a work piece storing rack and putting the selected work piece onto the work piece holders of the positioning device; [sic] and (f) moving the carrier together with the positioning device to the certain assembling stage with the selected work piece kept held by the work piece holders and positioned with respect to the carrier.

(Sekine, col. 2, ll. 10-32.)

4. At some point in time prior to implementation of the process above, Sekine first must necessarily identify this set of steps to be performed on the workpiece and then identify the sublines and the equipment, i.e., the work presenters and processing tools, within each subline to perform these steps within the set of sublines (subassembly lines 1 through 16) that are expressly disclosed within Sekine.
5. We see no difference between the claimed work cells and the sublines of Sekine.

#### PRINCIPLES OF LAW

Claims define the subject matter Appellants regard to be their invention. *In re Moore*, 439 F.2d 1232, 1235 (CCPA 1971). In addition, claims are given the broadest reasonable construction consistent with the specification. *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). The

Appellants have the burden to precisely define the invention, not the PTO. *Id.* at 1056. Appellants always have the opportunity to amend the claims during prosecution; a broad interpretation by the Examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969).

Words in claims “are generally given their ordinary and customary meaning” to a person of ordinary skill in the art at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (en banc) (citing *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). How a person of ordinary skill in the art understands a claim term “is based on the well-settled understanding that inventors are typically persons skilled in the field of the invention and that patents are addressed to and intended to be read by others of skill in the pertinent art.” *Id.* at 1313. When interpreting a claim, unless the inventor has set forth a definition for a term that term will be given its ordinary and customary meaning as understood by one skilled in the pertinent art. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Anticipation is a question of fact. *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997).

It is well settled that in order for the Examiner to establish a prima facie case of anticipation, each and every element of the claimed invention,

arranged as required by the claim, must be found in a single prior art reference, either expressly or under the principles of inherency. *See generally, Schreiber*, 128 F.3d at 1477; *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677-78 (Fed. Cir. 1988); *Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick*, 730 F.2d 1452, 1458 (Fed. Cir. 1984).

When relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. *See Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Patent App. & Int. 1990).

After the PTO establishes a *prima facie* case of anticipation based on inherency, the burden shifts to the Appellants to prove that the subject matter shown to be in the prior art does not possess the characteristics of the claimed invention. *See In re Thorpe*, 777 F.2d 695, 697 (Fed. Cir. 1985); *In re King*, 801 F.2d 1324, 1327 (Fed. Cir. 1986).

Appellants' attorney's arguments in a brief cannot take the place of evidence. *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974). *See also In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984).

## ANALYSIS

The Appellants argue claims 1-4 as a group for the ground of rejection with respect to anticipation. As such, we select claim 1 as the representative claim for the group. Accordingly, claims 2-4 will stand or fall with representative claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

In reaching our decision in this appeal, we have given careful consideration to the Appellants' Specification and claims, to the applied prior art reference, and to the respective positions articulated by the Appellants and the Examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the Examiner is sufficient to establish a case of anticipation. As such, we will affirm the Examiner's decision to reject claim 1-4 as being anticipated by the prior art, because we find the Appellants have not shown that the Examiner erred in rejecting representative claim 1. Our reasoning for this determination follows.

The term "standardized" is "readily apparent even to lay judges, and [this] claim construction ... involves little more than the application of widely accepted meaning of commonly understood words." *Phillips*, 415 F.3d at 1314. As such, the term is understood to mean regularly and widely used, available, or supplied as in - standardized automobile equipment. On the other hand, the terms "subline" and "cell" are terms of art. Accordingly, these terms will be given their ordinary and customary meaning as understood by one skilled in the pertinent art. *Paulsen*, 30 F.3d at 1480. To one of ordinary skill in the art there appears to be no difference between the terms when claiming and disclosing such an invention. (Finding of Fact 5.) Moreover, the Appellants have not argued such a difference exists.

The Examiner has found Sekine discloses a manufacturing process line for vehicle closures constituting a set of discrete steps. (Answer 3 and see also Finding of Fact 3.) The Examiner has found Sekine discloses a plurality of standardized sublines having at least one work presenter holding a workpiece in a predefined spatial orientation. (Answer 3 and see also Finding of Facts 1 and 2.)

As stated *supra*, the Examiner has to provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. In this case, the Examiner has provided a basis in technical reasoning within the ground of rejection. The Examiner's technical reasoning is “[i]n order to put an assembly [sic, a manufacturing process line] into tangible form [sic, operation], its elements must have at least been designed, identified[,] and assembled in a certain manner.” (Answer 4.) Additionally, in response to the Appellants' Brief, the Examiner provided further technical reasoning.

A method of designing is inherent to the provision of not only a manufacturing process line but any product or apparatus unless it involves steps more substantial than mere identification and provision of components. Methods of designing only fall outside the realm of inherency when they incorporate steps such as calculations or comparisons that lead to a more ideal final product than would be produced by simple identification of parts and selection of steps. Appellant[s] cannot hardly be heard to argue that a manufacturing process line can be manifested without the preliminary steps of identifying a process of steps and subsequently designing a process line of suitable work cells having suitable workpiece presenters and suitable processing tools. Such a method is necessary to the provision of every manufacturing process line created. It would be unreasonable to contend that the state of the art of manufacturing lines involves anything less (*e.g.*[,] *indiscriminately picking and placing tools and work cells without regard to a design or plan*).

(Answer 6-7.) (Emphasis added.)

The Examiner's technical reasoning is in accord with our finding of facts. (See Finding of Fact 4.)

As stated *supra*, after the Examiner establishes a *prima facie* case of anticipation based on inherency, the burden shifts to the Appellants to prove that the subject matter shown to be in the prior art does not possess the characteristics of the claimed invention. In this case, the Appellants have provided a number of arguments. For instance, the Appellants have argued that the Examiner’s reliance on the reference is misplaced and the Examiner has mischaracterized the claims. Moreover, the Appellants provide their understanding of the case law associated with the doctrine of inherency. With this understanding, the Appellants argue Sekine does not inherently disclose designing, identifying, and assembling in a certain manner the elements disclosed in Sekine. Further, the Appellants contend the Examiner has offered no evidence to support the conclusion of inherency and that the Appellants invention and Sekine seek to solve different problems. (App. Br. 5-8.) Replying to the Examiner’s further technical reasoning found in the Answer, the Appellants contend a manufacturer need not engage in the contended steps to implement the assembly line of Sekine. (Reply Br. 2.)

As stated *supra*, the Appellants’ attorney’s arguments cannot take the place of evidence. As noted *supra*, the Appellants have provided only arguments to rebut the Examiner’s finding of inherency.

In response to the Appellants’ contention the Examiner has not provided evidence of inherency, we respectfully disagree. We note that the Examiner need only provide a basis in fact and technical reasoning to establish anticipation by inherency. The Examiner’s technical reasoning has been given both in the ground of rejection and in response to the arguments presented by the Appellant. (See Answer 4, 6, and 7.) As such, the burden shifts to the Appellants to provide evidence. The Appellants

have instead provided arguments. Arguments cannot take the place of evidence. As such, the Appellants have failed to shift the burden back to the Examiner.

In response to the Appellants' contention in the Reply Brief on page 3 that the Examiner ignored certain elements within the claim which are limited to being "standardized," we also respectfully disagree. For example, the Examiner found the looped guideway constitutes part of a standardized workpiece presenter. (Answer 3 and see also Finding of Fact 2.) Moreover, the law of anticipation does not require that the prior art reference teach the Appellants' purpose disclosed in the specification, but only that the claims on appeal "read on" something disclosed in the prior art reference. *See Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983). And, the Appellants have not provided any evidence the looped guideway is not a standard piece of equipment in a manufacturing assembly line for vehicle bodies.

## CONCLUSION

We conclude that the Appellants have not shown that the Examiner erred in rejecting claims 1-4 as being anticipated by Sekine.

## DECISION

The decision of the Examiner to reject claims 1-4 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

Appeal 2008-3539  
Application 10/709,045

AFFIRMED

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